



Nacimiento Project Commission Notice of Special Meeting and Agenda

**Thursday, January 18, 2007– 4:00 pm
Templeton Community Services District Board Room
420 Crocker Street, Templeton CA**

- I. Call to Order, Roll Call, and Flag Salute
- II. Public Comment
This is the opportunity for members of the public to address the Commission on items that are not on the agenda, subject to a three minute time limit.
- III. Meeting Notes from December 14, 2006
(RECOMMEND APPROVAL)
- IV. COMMISSION INFORMATION ITEMS – written reports with brief verbal overview by staff or consultant. No action is required.
 - a. Abbreviated Project Management Report
- V. PRESENTATIONS – no action required.
 - a. (none)
- VI. COMMISSION ACTION ITEMS
(No Subsequent Board of Supervisors Action Required)
 - a. Election of Commission Officers
- VII. COMMISSION ACTION ITEMS
(Board of Supervisors Action is Subsequently Required)
 - a. Consideration of Owner Controlled Insurance Program
 - b. ESA Environmental Services Contract Amendment
- VIII. FUTURE AGENDA ITEMS DESIRED BY COMMISSION

Commissioners

Harry Ovitt, Chair, SLO County
Flood Control & Water
Conservation District

Dave Romero, Vice Chair, City of
San Luis Obispo

David Brooks, Templeton CSD

Grigger Jones, Atascadero MWC

Frank Mecham, City of El Paso
de Robles

**Next Commission meeting scheduled for
Thursday, February 15, 2007, at 4:00 pm at
Templeton Community Services District offices.**

Nacimiento Project Commission

January 18, 2007

Agenda Item III – Meeting Notes from December 14, 2006

I. Call To Order, Roll Call and Flag Salute

Chairman Ovitt convened the meeting at 4:00 pm.

Commissioners Present: Chairman Harry Ovitt, SLO County Flood Control & Water Conservation District
Dave Romero, City of San Luis Obispo
Frank Mecham, City of el Paso de Robles
David Brooks, Templeton CSD
Grigger Jones, Atascadero MWC

II. Public Comment – (none)

III. Meeting Notes from October 26, 2006 Meeting

Commissioner Mecham moved approval of the October 26, 2006, meeting notes; Commissioner Brooks seconded the motion; motion passed unanimously.

V.b Presentation on Project Insurance Options

Gary Brasser of Jacobs presented an overview of Owner Controlled Insurance Programs, or Wrap-Up Programs. For public agencies, the standard approach to construction contractors' insurance represents an estimated 7% of the construction value of the contract. While OCIPs save contractor's money by omitting the project value from their own policy coverage, the primary owner's benefit extend beyond insurance cost savings. OCIP benefits include 1) including small businesses as subs who otherwise could not meet the Project insurance requirements; 2) Owner maintains control over claim settlement; 3) Owner benefits from quicker, coordinated loss prevention programs; 4) greater emphasis on safety to result in less risk of injury. OCIPs also reach out to levels of sub-contractors, resulting in better overall coverage for all parties involved. Some disadvantages include administrative complexities. The Nacimiento Project is on the borderline as far as contract size goes for OCIP feasibility. John Hollenbeck is working with the County Risk Manager, Deb Hosli, to retain Alliant Insurance, the County's primary insurance advisor, in conjunction with Don Waddell as part of the Jacobs team, to perform a \$2,500 +/- OCIP feasibility study. Both John Hollenbeck and Gary Brasser advise further consideration, emphasizing that the OCIP decision is needed soon to alert the contracting community.

Commissioner Romero noted that there may be less insurance savings for larger contractors that routinely carry high insurance limits and Gary Brasser agreed. That's why it is important to put an OCIP in place prior to bidding so that any cost differential is reflected in competitive bidding. Chairman Ovitt asked what the OCIP insurance broker's role would be in the award of contracts to primes and sub-contractors and Gary clarified that they have no role in contract award. Brokers will require that certain terms be included in our bid documents pertaining to safety programs, insurance guidelines, and certification that contractor's own insurance will not apply to the Nacimiento Project. John Hollenbeck and Deb Hosli expect that Alliant Insurance would broker the OCIP.

Commissioner Brooks asked about contractor incentives for safety adherence. Gary Brasser mentioned a dividend reimbursement for incident-free contracts that could potentially be credited to the contractor. In the event that a claim exceeds the OCIP limit, it is likely that the liability would rest



back with the Owner (in this case, the Flood Control District). For this reason, higher-than-standard limits are expected.

John Hollenbeck seeks the Commission's advice on proceeding with an OCIP or standard approach to insurance coverage, noting that a decision is needed soon to alert the contracting community. Could a special meeting in January 2007 be arranged? John Moss noted that distribution of costs of an OCIP would also need to be determined in light of the entitlement contracts.

There was general concurrence with setting a special Commission meeting on January 18, 2007, at 4:00 pm at Templeton CSD offices primarily to consider the question of a Project OCIP.

IV. Project Manager's Report

Project environmental specialist, ESA, received three proposals to prepare an "Archaeological Research Design and Treatment Plan" for the Project as required by the State Historic Preservation Officer. Fees range from \$251,000 to \$391,700 to excavate and perform data recovery at seven mapped sites. Questions pertaining to this level of effort and possible unforeseen events remain, and a presentation by an experienced archaeological monitor at the January 2007 special meeting was suggested.

After checking Commissioner availability for the normal February 2007 Commission meeting, it was decided that the Commission would meet on February 15, 2007, at 4:00 pm at the Templeton CSD offices.

John Hollenbeck reported on the meeting with Conoco Phillips representatives during which they requested a realignment to avoid soil contamination. Steve Spratt of PG&E expects to have a revised Savings by Design report for the Nacimiento pipeline and a draft pump station report during the week of December 18th. It appears that the Project qualifies for pump station rebate monies.

The federal EPA is expected to issue a revised fish consumption warning pertaining to mercury levels at numerous lakes including Lake Nacimiento. John Hollenbeck is participating in the public outreach as the water agency representative for Lake Nacimiento.

Regarding the Project budget, John Hollenbeck and the Black & Veatch design team are seeing favorable, stabilizing trend in public bidding and know of no conflicting projects that may pose sharp competition for materials. Chairman Ovitt observed that local aggregate suppliers are limited. Total Project Costs are still expected to exceed the \$150 million stated in the contracts and Commissioners are encouraged to carry this message back to their respective agencies. No significant New Participants have expressed serious interest in participation.

V.a. Total Project Cost Update

Steve Foellmi, design project manager for Black & Veatch, recapped Project refinements made since the 50% progress point. The 90% design submittal is under quality control review by Black & Veatch's internal team, by Jacobs, and by the District. The 90% construction cost estimate is based on revised quantity take-offs and current quotes from suppliers. The Total Project Cost including construction and other costs is now \$186.5 million. Steve Foellmi reported the favorable response to the first Contractor Workshop with the next sessions scheduled for January 11 and March 19, 2007. Black & Veatch will issue a final engineer's cost estimate with each bid packet advertisement.



VII. Hearing of Necessity

Commissioner Romero moved to forward Commission support to the Board of Supervisors pertaining to the hearing of necessity; Commissioner Jones seconded the motion; passed unanimously.

IX. Future Agenda Items Desired by Commission

Possible agenda items for the January 18, 2007, special meeting include the OCIP recommendation, a presentation by an archaeologist, and possibly election of Commission officers.

Chairman Ovitt adjourned the meeting at 5:52 pm.

Submitted by Christine Halley



Nacimiento Project Commission
January 18, 2007
Agenda Item IV.a – Abbreviated Project Management Report
(Information Only – No Action Required)

PROJECT ISSUES

For this special meeting of the Commission, the Project Manager wishes to draw your attention to several issues. A full Project Management Report will be presented in February 2007.

1. Each Participant is asked to complete their Financial Disclosure Checklist by January 25, 2007. This is important to keep progressing with bond issuance.
2. A status of the acquisition effort as of January 12, 2007, is:

Number of Identified Parcels	Completed Legal Descriptions	Appraisals Ordered	Appraisals Complete	Offers Made	Agreements Signed
54 (47 private + other)	39	35	28	21	4

3. We still await confirmation that the NEPA document has been circulated by the National Guard and that Camp Roberts has initiated their appraisal process.
4. Positive news from National Marine Fisheries Service -- a biological opinion for the Project is expected by the end of January 2007.
5. The second construction contractor's workshop was held on January 11, 2007, with outstanding participation.
6. A staff meeting with Monterey County Water Resources Agency is scheduled for February 22, 2007.
7. A revised 2007 Calendar of Activities is attached indicating the final meeting dates for February 2007.

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Nacimiento Project Commission 2007 Calendar of Activities

Revised December 27, 2006

<p>JAN TSG – meet on Thursday, Jan 11, 2007 at 2:00 pm in Atascadero Commission – Special meeting on Thursday, Jan 18, 2007 at 4:00 pm in Templeton</p>	<p>FEB TSG – meet on Thursday, Feb 1, 2007 at 2:00 pm in Paso Robles Commission – meet on Thursday, Feb 15, 2007 at 4:00 pm in Templeton</p>	<p>MAR TSG – meet on Thursday, Mar 8, 2007 at 2:00 pm in San Luis Obispo Commission – Dark</p>
<p>Reminder: Elect Chair and Vice Chair at First Commission Meeting</p>		
<p>APR TSG – meet on Thursday, Apr 12, 2007 at 2:00 pm in Atascadero Commission – meet on Thursday, Apr 26, 2007 at 4:00 pm in Templeton</p>	<p>MAY TSG – meet on Thursday, May 10, 2006 at 2:00 pm in Paso Robles Commission – Dark</p>	<p>JUN TSG – meet on Thursday, Jun 14, 2007 at 2:00 pm in San Luis Obispo Commission – meet on Thursday, Jun 28, 2007 at 4:00 pm in Templeton</p>
<p>JUL TSG – meet on Thursday, Jul 12, 2007 at 2:00 pm in Atascadero Commission – Dark</p>	<p>AUG TSG – meet on Thursday, Aug 9, 2007 at 2:00 pm in Paso Robles Commission – meet on Thursday, Aug 23, 2007 at 4:00 pm in Templeton</p>	<p>SEP TSG – meet on Thursday, Sep 13, 2007 at 2:00 pm in San Luis Obispo Commission – Dark</p>
<p>OCT TSG – meet on Thursday, Oct 11, 2007 at 2:00 pm in Atascadero Commission – meet on Thursday, Oct 25, 2007 at 4:00 pm in Templeton</p>	<p>NOV TSG – meet on Thursday, Nov 8, 2007 at 2:00 pm in Paso Robles TSG – meet on Thursday, Nov 29, 2007 at 2:00 pm in San Luis Obispo Commission – Dark</p>	<p>DEC Commission – meet on Thursday, Dec 13, 2007 at 4:00 pm in Templeton TSG - Dark</p>



Nacimiento Project Commission
January 18, 2007
Agenda Item VI.a – Election of Commission Officers
(Board of Supervisors Action is Subsequently Required)

TO: Nacimiento Project Commission

FROM: Christine Halley, Nacimiento Project Engineer

DATE: January 18, 2007

In accordance with the Commission's adopted Rules of Procedure, the Commission is to elect a Chair and Vice-Chair at the first meeting of each year. Terms of office are for one year.

Supervisor Harry Ovitt now serves as Committee Chair and Mayor Dave Romero as Committee Vice-Chair. Elections for the coming year will be held at the January 18, 2007, Commission meeting.



Nacimiento Project Commission
January 18, 2007
Agenda Item VII.a – Consideration of an Owner-Controlled
Insurance Program
(Board of Supervisors Action is Subsequently Required)

TO: Nacimiento Project Commission

FROM: Christine Halley, Nacimiento Project Engineer

VIA: Noel King, Director of Public Works

DATE: January 18, 2007

Recommendation

Direct staff to set aside consideration of an Owner-Controlled Insurance Program for the Nacimiento Water Project and research with the County Risk Manager options for extended insurance coverage in addition to traditional coverage.

Discussion

Traditionally, the Flood Control District requires each professional consultant to provide professional liability, general liability, worker's compensation, auto, and other insurance naming the District as an additional insured on most policies. Construction contractors and subcontractors provide their own insurance. The District is self-insured. When a claim is made, the various parties' insurance representatives participate in investigating and settling the claim. The result is that the cost of providing the required insurance is reflected in professional fees and bid amounts and the claims investigation and settlement process involves many parties. While straight-forward to put in place, this approach to insurance coverage can become complex and time-consuming in the claims settlement phase.

An alternative to this approach is to provide general liability insurance coverage (and possibly worker's compensation) for the Project itself, extending coverage to the District, the construction management team, the construction contractors, and others involved in the Project. Such a Project policy is known as an "OCIP", or "Wrap-Up Program". OCIP stands for Owner Controlled Insurance Programs. An OCIP merges the insurance coverage into one general liability policy, rather than each party acquiring their own insurance.

The advantages of an OCIP include broader coverage with higher limits of liability as compared to a standard District project, increased emphasis on work site safety, significantly lower liability rates, and more effective claims management.

Additionally, the Owner knows what coverage all key players have within the construction project and can choose to have only specific coverage (i.e. worker's compensation, builder's risk, etc.) or full coverage. The coverage lasts through entire life of project and is available through a completed operations period. Under an OCIP approach, the Owner has control over

decision-making and creates consistency in claim settlement. In general, this approach lowers insurance costs to the Project, and fault disputes are settled in less time.

The disadvantages of an OCIP are that putting one in place can be time-consuming during early stages of implementation of OCIP, and there are administrative costs/time brought on by paperwork for OCIP. Questions may arise as to whether there would be more work done under OCIP as opposed to the contractor's own insurance. Another disadvantage is that OCIPs typically have a large deductible and contractors need assurance as to their degree of responsibility for paying deductibles.

Based on Commission direction at the December 14, 2006, meeting, San Luis Obispo County's insurance broker, Alliant Insurance Services, Inc., performed a feasibility study on the Project's behalf to:

- Review the scope and timeline of the Nacimiento Water Project
- Review the major risk exposures of the Project
- Identify key Project risk control components
- Investigate the availability and appropriateness of potential insurance vehicles
- Render an opinion as to the economic viability of an OCIP for the Nacimiento Water Project

Alliant's feasibility study dated January 5, 2007, concluded that "the Nacimiento Water Project is a strong candidate for a successful OCIP". They estimate that the cost of insurance if fully provided by construction contractors (i.e. the traditional approach) might be over \$6 million. This dollar amount is normally reflected in the contractor's bid items. Alliant went on to estimate the cost of providing OCIP coverage to range from \$3.5 million to just under \$6 million, with actual policy costs varying depending on the extent of losses throughout the construction phase.

Concurrent with receipt of the Alliant feasibility report, the District hosted the second Construction Contractor's Workshop for the Project. Consideration of a OCIP was on the agenda with that group and the general input from those contractors participating was that OCIP savings may be overstated because contractors must still keep insurance in place for activities that are not covered by OCIP, and that the concept rewards contractors with poor safety records. Concerns were voiced about the OCIP safety expectations on a crew-by-crew basis and the high insurance deductibles. Some suggested that rather than put an OCIP in place, the District could require higher coverage, say, \$10 million in general liability. Ensuring that the general contractors extend responsibility down to their subconsultant tiers, too, would benefit the District.

The Technical Support Group discussed the issue later that same day, with a representative from Alliant Insurance Services, Inc. Considering the advantages of an OCIP weighed against the concerns voiced by the set of contractors earlier in the day, the TSG advises that we cease pursuit of an OCIP and rather approach Project insurance coverage in a different way. Options mentioned was to secure excess insurance coverage to pick up where the District/County's self-insurance coverage leaves off. Another option was to wrap-up only the builder's risk insurance for the Project and have contractors provide coverage for other aspects.

The Project Manager may research these and other Project insurance options with the County's Risk Manager and possibly retain an insurance specialist to advise us on this topic. The cost of these steps are expected to be nominal.

Options that the Commission has are:

1. Direct staff to entertain proposals for OCIP coverage and retain Alliant Insurance Services, Inc. to assist the District in that effort.
2. Direct staff to proceed with requiring the standard insurance from contractors as is normally stated in County Public Works construction documents.
3. Direct staff to set aside consideration of an OCIP and research with the County Risk Manager options for extended insurance coverage in addition to traditional coverage.

In consideration of the Alliant feasibility study, the remarks made by participants at the Construction Contractor Workshop, and based on the TSG discussion, staff requests direction to set aside consideration of an Owner-Controlled Insurance Program for the Nacimiento Water Project and research with the County Risk Manager options for extended insurance coverage in addition to traditional coverage.

Other Agency Involvement

The District's approach to construction phase insurance would indirectly involve the Participants.

Financial Considerations

The Nacimiento Project Water Delivery Entitlement Contracts do not speak directly to construction contractor insurance coverage or the costs associated therewith. Article 16 – Obligations for Nacimiento Project Costs speaks to cost allocation among Participants and infers that costs such as insurance costs would be treated as part of the “All Other Construction Costs Component” identified in Article 16.C.3.3.c. That article calls for such costs to be apportioned to each Participant according to the Participant's Unit Percentage Share stated in that article.

Costs for working with the County Risk Manager and possible retention of an insurance specialist are expected to be nominal and covered within the Design Phase Budget Reserve.

Results

Putting a tailored insurance approach in place for the Nacimiento Water Project contributes toward responsible Project management and protection of public assets as we go forth with Project construction.

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Nacimiento Project Commission
January 18, 2007
Agenda Item VII.b – ESA Environmental Services Contract Amendment
(Presentation - No Action Required)

TO: Nacimiento Project Commission

FROM: Christine Halley, Nacimiento Project Engineer

VIA: Noel King, Director of Public Works

DATE: January 18, 2007

Recommendation

Recommend to the Board of Supervisors that they amend their agreement with Environmental Science Associates Inc. dated April 5, 2005, to expand the scope of their environmental consulting services for the Nacimiento Water Project and to authorize up to an additional \$410,333 for such expanded services.

Discussion

Following a competitive procurement process, the Flood Control District hired Environmental Science Associates Inc. (ESA) to provide design phase environmental consulting services for the Nacimiento Water Project. ESA has been providing environmental permitting and mitigation planning services for the Project since April of 2005. They have successfully secured Department of Fish & Game permits to perform geotechnical borings, and a letter of concurrence from NOAA's National Marine Fisheries Service for the Project as a whole. A biological opinion for the project from US Fish & Wildlife Service is anticipated within one month, and all regulatory permits are expected to be issued by April of this year. ESA also completed the NEPA documentation for the Camp Roberts impacts and awaits its release for circulation.

ESA has also prepared numerous Project mitigation plans including the Cultural Monitoring Plan, Oak Tree and Woodland Mitigation Plan, Vegetation Restoration Plan, etc. They are in active dialogue with the design team to see that mitigations and permit conditions are reflected in the construction documents.

Overall, the permit process is going well with no major setbacks so far.

In May 2006, ESA made \$36,500 payment of permit processing fees to the California Dept. of Fish & Game and to the Regional Water Quality Control Board. Payment of such fees is not part of ESA's base agreement, rather they paid these fees as a convenience for the District and to keep the permitting process moving. Part of their requested contract amendment (Amendment No. 5) is to reimburse them for these fees.

At the onset of design, the initial plan was to avoid all identified cultural (archaeological) sites along the 45 mile corridor either by re-directing the pipeline or by "drilling" under the sites. This was feasible for most sites, but not all due to other physical constraints, soils conditions,



and associated environmental impacts. As a result, the pipe will be constructed through several identified cultural sites. An Archaeological Research Design and Treatment Plan must be prepared to address the remaining seven sites. This involves excavation at the seven historic properties to precede pipeline installation allowing sufficient time to perform historic “data recovery” without delaying pipe construction.

ESA solicited proposals from environmental consultants to perform this excavation and data recovery along with preparation of the required Archaeological Research Design and Treatment Plan. Initial fee estimates for this set of services range from \$251,000 to \$391,000. Staff recommends that ESA bring on one of the cultural resource firms, Albion, as a subconsultant. Performing this archaeological excavation and data collection now is expected to allow pipeline construction to proceed without delay and to allow time for orderly retrieval and cataloguing of significant finds. Albion has worked with ESA on prior projects, carrying a good reputation for timely project completion and quality submittals to the State historic preservation officer. Note that representatives of local Native American tribes will also be given the opportunity to participate in this effort. Today’s recommended action would provide for a budget of \$330,000 for this set of services including ESA’s management thereof.

Last, ESA’s current contract authorizes them to provide support services through the design phase. The date stated in their initial contract is April 2008 and it is understood that ESA is to support the Project through permit acquisition and the bid period. Once we are in construction, environmental monitoring will be underway through a separate contract. Judging by the progress of the design and permitting, ESA is expected to provide design phase services through mid 2007.

ESA’s remaining fee as of November 30, 2006, was \$47,633 including contingency. Assuming we authorize the \$36,500 permit fee reimbursement, this leaves approximately \$84,100 as of December 1, 2006, to complete their design phase environmental consulting services. This amount may be sufficient to cover remaining ESA services which include:

- Ongoing dialogue with regulators through permit issuance
- Review of ongoing Project design changes and associated permit document revision and field assessments of impacts.
- Coordination of mitigation and permit terms within the contract documents
- Identification of specific sites for oak mitigation
- Preparation of the biological education program

While the remaining \$84,100 may adequately cover ESA’s remaining services, it is difficult to predict with accuracy the permit issues that may need resolved over the next six months. For this reason, the Project Manager recommends maintaining \$50,000 in contingency for use if needed in the months ahead. In summary, the total requested fee for Amendment No. 5 is:

Reimbursement for permit fees	\$36,500
Archaeological support services	\$330,000
Additional funds to hold approx. \$50,000 contingency	<u>\$43,833</u>
Total Requested Amend No. 5 fee	\$410,333

Other Agency Involvement

Project costs continue to be apportioned to the Participants. ESA's proposed amended contract will involve ongoing involvement with the numerous regulatory agencies that oversee the Project construction permitting, especially the State Historic Preservation Officer.

Financial Considerations

A recap of the existing fee authorization is:

Base fee authorized on Apr 5, 2005	\$749,667
Contingency	<u>\$50,000</u>
Total Base Fee	\$799,667
Amend No. 1 dated Nov 1, 2005, for preparation of the EIR Addendum	+\$100,000
Amend No. 2 dated Dec 6, 2005, for coordination of geotechnical survey	\$0
	(authorized use of contingencies)
Amend No. 3 dated Aug 7, 2006, for NEPA Assessment	\$0
	(authorized use of contingencies)
Amend No. 4 dated Nov 14, 2006, for SWPPP preparation	\$0
	(authorized use of contingencies)
Total Fee Authorization to Date	\$899,667
	(including use of contingency such that \$6,220 remains)

Proposed Amend No. 5 requested fee	\$410,333
	(including \$50,053 in contingency)

Total Proposed Fee Authorization	\$1,310,000
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The line item budget approved for ESA's design phase environmental services is now \$899,667. The Commission's support of this proposed contract amendment would increase that line item budget to \$1.31 million, with the difference coming from the approximately \$2.7 million design phase budget reserve. This would leave approximately \$2.3 million in the design phase budget reserve plus the anticipated \$2 million in design phase savings.

Results

Amending ESA's professional services contract would position the Project to be in-line with promised mitigations from the environmental studies and better assure compliance with regulatory permit conditions.

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